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Attorneys for the United States of America

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IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH,  
CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:08-cv-903

vs.

Judge Ted Stewart

UNION PACIFIC RAILROAD  
COMPANY, a Delaware corporation,  
UTAH RAILWAY COMPANY, a Utah  
corporation, and MOTIVEPOWER, INC., a  
Delaware corporation

**JURY TRIAL REQUESTED**

Defendants.

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**ORIGINAL COMPLAINT**

The plaintiff, the United States of America ("United States"), files this Original Complaint against defendants Union Pacific Railroad Company ("UPRR"), Utah Railway Company ("URC") and MotivePower, Inc. ("MPI"), and states as follows:

**NATURE OF THE CASE**

1. This is a civil action to recover monetary damages incurred by the United States that arose from a June 30, 2002 wildfire in Price Canyon, Utah.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.
3. Venue lies in this District pursuant to 28 U.S.C. § 1391(b)(1), (2), and (3).

### **PARTIES**

4. Plaintiff is the United States of America. As sovereign, the United States owns lands within the State of Utah that it is responsible for managing and protecting.
5. Defendant UPRR is a corporation organized under Delaware law, doing business in Utah.
6. Defendant URC is a corporation organized under Utah law, doing business in Utah.
7. Defendant MPI is a corporation organized under Delaware law, doing business in Utah.

### **UPRR'S OPERATIONS**

8. UPRR operates and maintains railroad track and railroad trains throughout the State of Utah on rights of way granted by the United States.
9. UPRR's failure to properly operate and maintain its railroad tracks, railroad trains, and rights of way has previously caused the ignition of wildfires in its rights of way.
10. These wildfires endanger the safety of the public and damage or destroy personal and real property owned by others, including private citizens and the United States.
11. These wildfires require the expenditure of public funds to suppress the fires and rehabilitate public lands.
12. UPRR is responsible for maintaining and operating its trains to avoid igniting wildfires that endanger the public and threaten personal and real property owned by the United States and others.
13. UPRR is responsible for maintaining its rights of way in a reasonable condition to avoid

igniting wildfires that endanger the public and threaten personal and real property owned by the United States and others.

14. In any action for damages from a fire caused by sparks emitted from locomotive engines on a rail line, proof that the fire occurred and was caused by sparks emitted from a locomotive engine operated by the railroad is prima facie evidence of negligence on the part of the railroad. UTAH CODE ANN. §56-1-15 (2007).

#### **URC'S OPERATIONS**

15. URC owns and operates locomotive engines. Part of URC's business involves providing "helper engines" to trains traveling through Utah. Helper engines are locomotive engines that are temporarily attached to a train to provide additional power to help the train climb a steep grade, such as the grade found in Price Canyon, Utah.
16. URC is responsible for maintaining and operating its locomotive engines to avoid igniting wildfires that endanger the public and threaten personal and real property owned by the United States and others.
17. In any action for damages from a fire caused by sparks emitted from locomotive engines on a rail line, proof that the fire occurred and was caused by sparks emitted from a locomotive engine operated by the railroad is prima facie evidence of negligence on the part of the railroad. UTAH CODE ANN. §56-1-15 (2007).

#### **MPI'S OPERATIONS**

18. Part of MPI's business involves providing locomotive fleet maintenance services. URC hired MPI to maintain and service its locomotive engines in Utah.
19. MPI is responsible for maintaining the URC locomotive engines to avoid igniting

wildfires that endanger the public and threaten personal and real property owned by the United States and others.

### **THE PRICE CANYON FIRE**

20. On June 17, 2002, MPI found that the turbo charger on URC locomotive #6063 was “noisy” and “belching black smoke.” These problems with the turbo charger were symptoms of underlying problems with the locomotive’s engine.
21. A reasonably prudent person would have properly diagnosed the underlying engine problems that resulted in the turbo charger’s failure, and taken corrective action, before installing a another turbo charger, because a failure to do so could result in the failure of another turbo charger.
22. MPI and URC, however, failed to diagnose or correct the underlying engine problems, and instead, on June 28, 2002, simply installed another turbo charger on locomotive #6063.
23. On June 30, 2002, after the new turbo charger had been installed, URC provided locomotive #6063 to UPRR to assist a UPRR train up UPRR’s rail line in Price Canyon in Carbon County, Utah.
24. Because of the failure to correct the underlying engine problems, and/or to correctly install the turbo charger on locomotive #6063, the newly-installed turbo charger suffered a catastrophic failure, emitting sparks that started a wildfire in the dry grasses and combustible materials that had accumulated in UPRR’s right of way in Price Canyon, Utah (the “Price Canyon fire”).
25. The Price Canyon fire burned through UPRR’s right of way and on to lands owned by the

United States, requiring the United States to take action to suppress the Price Canyon fire.

26. As a result of the fire, the United States sustained damages, including approximately \$653,364.91 in fire suppression and rehabilitation costs (“Fire Costs”).

### **COUNT ONE**

#### **(Common Law Negligence - Failure to Properly Maintain Locomotive Engine Against URC and MPI)**

27. The United States reasserts all allegations previously made.
28. URC and MPI are jointly and severally responsible for the maintenance of URC’s railroad engines.
29. URC and MPI have a duty to maintain the URC railroad engines in a reasonably prudent condition and manner to protect the general public, including property owners such as the United States, from the start of wildfires.
30. As described above, URC and MPI breached their duty to the general public, including property owners such as the United States, by failing to maintain URC locomotive #6063 in a reasonably prudent condition and manner to prevent the start of wildfires.
31. As a direct, proximate, and legal result of URC’s and MPI’s breach of this duty, the Price Canyon fire was started, which damaged lands owned by the United States and required reasonable suppression and rehabilitation efforts by the United States to minimize the harm caused by the Price Canyon fire.

### **COUNT TWO**

#### **\_\_\_\_\_ (Common Law Negligence–Failure to Maintain Right of Way Against UPRR)**

32. The United States reasserts all allegations previously made.
33. UPRR has a duty to maintain its rights of way in a reasonable condition to avoid igniting

wildfires that endanger the public and threaten personal and real property owned by the United States and others.

34. UPRR breached this duty by failing to properly maintain its right of way and allowing the accumulation of dry grasses and combustible materials.
35. As a direct, proximate, and legal result of UPRR's breach of this duty, the accumulated grasses and materials in its right of way caught fire when the turbo charger suffered a catastrophic failure. The fire burned through UPRR's right of way onto lands owned by the United States. The fire damaged lands owned by the United States and required reasonable suppression and rehabilitation efforts by the United States to minimize the harm caused by the fire.

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**COUNT THREE**

**(Statutory liability for train operations under  
UTAH CODE ANN. §56-1-15 (2007)  
Against UPRR and URC)**

36. The United States reasserts all allegations previously made.
37. UPRR and URC are responsible for the maintenance and operations of their railroad trains.
38. UPRR and URC have a duty to maintain and operate their railroad trains in a reasonably prudent condition and manner to protect the general public, including property owners such as the United States, from the start of wildfires.
39. UPRR and URC breached their duty to the general public, including property owners such as the United States, by failing to maintain and operate their railroad trains in a reasonably prudent condition and manner to prevent the start of wildfires.

40. Pursuant to UTAH CODE ANN. §56-1-15 (2007), UPRR and URC are prima facie negligent because in this action for damages, the wildfire was caused by sparks emitted from a URC locomotive engine, attached to a UPRR train, operated on UPRR's rail line.
41. As a direct, proximate, and legal result of UPRR's and URC's negligence, the Price Canyon fire was started, which damaged lands owned by the United States, and required reasonable suppression and rehabilitation efforts by the United States to minimize the harm caused by the Price Canyon fire.

**COUNT FOUR**

**(Common law liability - *res ipsa loquitur*  
Against URC and MPI)**

42. The United States reasserts all allegations previously made.
43. The Price Canyon fire caused by locomotive engine 6063 would not, in the ordinary course of events, have occurred had URC and MPI used due care.
44. URC and MPI had exclusive management and control of locomotive engine 6063, and the turbo charger on that engine catastrophically failed and caused the Price Canyon fire.
45. The Price Canyon fire occurred irrespective of any actions of the plaintiff, the United States.
46. A jury could, therefore, logically conclude that the Price Canyon fire was probably caused by URC and MPI's negligence and award the United States its Fire Costs.

**REQUEST FOR RELIEF**

The United States, therefore, requests that judgment be entered in its favor and against UPRR, URC, and MPI as follows:

- a. Damages in the amount of \$653,364.91;

- b. Interest and penalties pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13;
- c. Post-judgment interest at the statutory rate;
- d. Pursuant to 28 U.S.C. § 2412(b), the United States requests an award of costs and attorneys' fees; and
- e. Such further relief as this Court deems just and equitable.

**JURY DEMAND**

The United States requests a trial by jury on all issues so triable.

Dated this 21<sup>st</sup> day of November, 2008.

BRETT L. TOLMAN,  
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/s/ Tyler L. Murray  
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